

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2451 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

PREMILABEN WD/O JAGDISHBHAI BHAILALBHAI PATEL

Versus

SHERKHAN MALAKHAN PATHAN

Appearance:

MR NS SHETH for Petitioner

MR GA JOSHI representative of the Respondent
Sherkhan Malkhan Pathan.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/09/97

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 29.11.1994 passed by the Labour Court, Ahmedabad in Recovery Application No.3595 of 1988 under section 33(C)(2) of the Industrial Disputes Act. Through the Recovery Application as aforesaid, the respondent Sherkhan Malkhan Pathan who was employed with

Jayesh Nursery claimed Rs.33,300/- against the overtime and a sum of Rs.16,800/- as the wages for a period of 48 months. The respondent came with the case in the Recovery Application that he had served nursery for 40 years and he was being paid @ Rs.350/- p.m. from 1.9.1984. A grievance was raised that he had not been paid wages for the period 1.9.1984 to 31.10.1988. The Labour Court after adjudication of the claim as aforesaid found that the respondent had served the petitioner nursery in terms of the agreement Exh.10. The Labour Court found that the respondent workman had failed to establish his claim with regard to the dues of overtime but it found that the respondent workman was entitled to the unpaid wages for the period of 48 months and accordingly the claim has been allowed partly to the extent of payment of Rs.16,800/-. The Labour Court has found that the petitioner herein had failed to prove its case that the respondent was working somewhere else. Sofar as the unpaid wages are concerned the finding of the Labour Court is categorical that the wages remained unpaid for a period of 48 months and on the basis of the agreement, rate at which the respondent was required to be paid is established. The Labour Court has passed the order dated 29.11.1994 on the basis of the documents exh.10 in the form of agreement which was available before it as part and parcel of contemporaneous evidence. Sum of Rs.16,800/- for which the respondent was held to be entitled by the Labour Court was deposited in this Court by the petitioner in terms of this Court's order dated 18.11.1995 and on Civil Application No. 7065 of 1997 being moved by respondent No.1 while deciding the Civil Application on 2.9.1997 an order had been passed that this amount of Rs.16,800/- may be withdrawn by the respondent workman.

In the facts and circumstances of this case, it is clear that the respondent workman is an old man of 82 years and has no source of income or any property to support him. In case the amount has not been withdrawn so far the respondent workman may withdraw the same even now and the registry shall act in accordance with the order passed in Civil Application No. 7065 of 1997 on 2.9.1997. The respondent workman shall also be entitled to recover the amount of costs as was granted by the Labour Court i.e. a sum of Rs.200/-. The order dated 29.11.1994 passed by the Labour Court, Ahmedabad in Recovery Application No.3595 of 1988 does not suffer from any infirmity whatsoever so as to warrant interference of this Court under Article 227 in a writ of certiorari. This Special Civil Application is therefore dismissed. Rule is hereby discharged.

Since the petition itself has been dismissed it will not be necessary for the workman to file any undertaking as was ordered in Civil Application and in case he seeks to withdraw this amount now the same may be made available to him through crossed cheque in the name of the concerned respondent workman without the requirement of any undertaking.

m.m.bhatt